

BACKGROUND PAPER
HEARING EXAMINER APPEALS AND THE COUNTY COUNCIL

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Background

Commissioner Kelly requested staff to provide the commission with background information related to the Hearing Examiner, County Council and Superior Court related to land use decision appeals. This paper provides background related to the current process and the issue the Charter Review Commission may debate.

The Issue

All Hearing Examiner appeals, land use permit applications, SEPA and rezones shall go directly to Superior Court and bypass county council as part of the process.

The Current Process

Snohomish County is authorized and uses a professional Hearing Examiner. "A Hearing Examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purposes of having a hearing examiner conduct these hearings is to have professionally trained individual make objective quasi judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearing to better concentrate on policy making and it can reduce local government liability exposure."¹

In Snohomish County citizens may directly appeal a decision by the Hearing Examiner to the County Council who will render a decision. Council decisions can then be directly appealed in Superior Court.

Focus of the Issue

Marysville Public Works Director Paul Roberts and City of Edmonds Director of Development Duane Bowman concur with Commissioner Kelly that the current process mixes judicial and legislative processes. As stated earlier the Hearing Examiner process is quasi-judicial while the legislative process is policy and political brokering to reach compromises on complex issues. "It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision making. Professional hearing examiners should be immune from political pressures."²

This has the potential of creating liability for the County as well as Council members personally. Duane Bowman cited Mission Springs versus the City of Spokane as a case

¹ Use of Hearing Examiners by Cities and Counties in Washington MRSC Focus, page 1, May 1999,

² Ibid, page 7

where the court held the city council members personally liable for a land use decision. "Mr. Bowman stated this was because their decision was arbitrary and capricious."³ Once the Council enters into the appeals process, they must act in a judicial manner, following strict rules of procedure. Any deviation from the process can invite further appeal and litigation whereby taxpayers could ultimately be liable.

The Judicial process determines compliance with law rule and regulation as passed by legislative authorities. Mr. Bowman states that appropriate areas for decision making by Hearing Examiners are, Planned Residential Communities, Variances, Conditional Use Permits etc. The Hearing Examiner process is governed by their rules of procedure. That 34 page document can be accessed on the Hearing Examiner's web site.

Appropriate areas for focus of Legislative Authorities are, Land Use Plans, Zoning Regulations, and other long range plans and policy issues.

Furthermore the issue of impartiality has been raised. It may be difficult for Council members, who meet with constituents as part of their job to re-main impartial and unbiased if a known constituent appeals a hearing examiner decision to the County Council. On the other side some council members say they can be impartial in this very narrowly defined process.

Those in favor of eliminating the County Council from the land use appeals process believe:

- There is reduced liability relating to land use decisions and or procedural challenges to decisions.
- The entire process is handled by appointed professionals
- It removes politics from a quasi judicial process.

Those who believe having the county council involved believe:

- There is direct accountability to the voters
- Less costly to appeal to County Council than Superior Court.

By the Numbers

Deputy Prosecuting Attorney Millie Judge provided the attached chart showing how many cases ruled by the Hearing Examiner were appealed to the County Council and then of those how many went to Superior Court. 2006 appears to be seeing both an increase in the number of cases heard by the Hearing Examiner as well as the number of cases being appealed to the County Council.

³ Telephone call with Duane Bowman

Attachments

- Hearing Examiner System in Washington
- Use of Hearing Examiners by Cities and Counties in Washington State
- Snohomish County Hearing Examiner Web Page
- Snohomish County Hearing Examiner Administrative Appeals 2002-2006



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Hearing Examiner System in Washington

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About the Hearing Examiner System

Cities and counties in Washington State have statutory authorization to establish a hearing examiner system. Under a hearing examiner system, a city or county hires or contracts with a hearing examiner to conduct quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual, typically an attorney, make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making. It can also potentially reduce local government liability exposure through what should be more consistent and legally-sustainable quasi-judicial decisions.

A board of county commissioners or a city council has considerable discretion in establishing how the hearing examiner system will operate. The position of hearing examiner (appointment, qualifications, termination, etc.), the type of issues the hearing examiner is authorized to consider and decide, and the effect of the hearing examiner's decisions are among the matters that should be addressed by the local legislative body and set out in the enabling ordinance. Although counties and cities use hearing examiners primarily for hearing and deciding land use permit applications and/or administrative appeals of land use decisions, hearing examiners may also be used to conduct hearings and make recommendations or decisions on other local matters.

A MRSC Focus paper on [Use of Hearing Examiners by Cities and Counties in Washington](#) describes the use of a hearing examiner system, the pros and cons of having a hearing examiner, and options available to smaller jurisdictions.

Statutes and Regulations

- [RCW 35.63.130](#) - Authorizes use of a hearing examiner system in first and second class cities and towns for certain zoning matters
- [RCW 35A.63.110](#) - Authorizes hearing examiner system as replacement for board of adjustment
- [RCW 35A.63.170](#) - Authorizes use of a hearing examiner system in code cities for certain zoning matters

- RCW 36.70.970 - Authorizes use of a hearing examiner system in counties for certain zoning matters
- RCW 58.17.330 - Authorizes use of a hearing examiner system in cities and counties for hearing and issuing recommendations or decisions on preliminary plat
- RCW 36.70B.020(3) - Defines open record hearings on project permit applications – hearing examiner may conduct
- RCW 36.87.060(2) - Authorizes hearing examiner to conduct hearing on proposed county road vacation
- **LID/RID Hearings**
 - RCW 35.43.140 - Authorizes use of a hearing examiner to conduct hearing on proposed LID formation
 - RCW 35.44.070 - Authorizes use of a hearing examiner to conduct LID assessment roll hearing
 - RCW 36.88.062 - Authorizes use of a hearing examiner to conduct hearing on proposed RID formation
 - RCW 36.88.095 - Authorizes use of a hearing examiner to conduct RID assessment roll
 - RCW 36.94.260 - Authorizes use of a hearing examiner to conduct hearings on assessments for LID within the area of a sewerage and/or water general plan
- RCW 46.55.240 - Authorizes use of a hearing examiner to conduct hearings on abatement and removal of junk vehicles from private property
- RCW 43.21C.075 - Authorizes use of a hearing examiner to conduct hearings on SEPA appeals
- WAC 458-14-136 - Authorizes county boards of equalization to employ hearing examiner(s)

Ordinance Provisions

- **Auburn (*Applies to Land Use and Other*)**
 - Auburn Municipal Code, Ch. 18.66 - Hearing Examiner
 - Auburn Municipal Code, Section 1.25.020 - Hearing Examiner (Civil Penalties for Violations)
- **Battle Ground Municipal Code, Ch. 2.10 - Hearing Examiner System (*Applies to Land Use and Administrative Decisions, Land Division, Zoning, Environmental Protection*)**
- **Bellevue Office of the Hearing Examiner (*applies to general policies and regulations adopted by the City Council to specific proposals or situations. Hearings are conducted about land use applications, appeals from decisions of City departments, and various enforcement issues*)**
 - Bellevue Municipal Code, Ch. 3.68 - Hearing Examiner
 - Bellevue Municipal Code, Section 1.18.050 - Hearing before the hearing examiner (Civil Enforcement)
 - Bellevue Municipal Code, Ch. 20.35 - Review and Appeal Procedures (Land Use Code)
- **Bellingham (*Applies to Land Use and General Administrative*)**
 - Bellingham Municipal Code, Ch. 2.56 - Hearing Examiner
 - Bellingham Municipal Code, Section 2.56.050 - Powers and Jurisdiction (List of Areas Covered)
- **Bonney Lake (*Applies to Land Use*)**
 - Bonney Lake Municipal Code, Ch. 2.18 - Hearing Examiner
 - Bonney Lake Municipal Code, Ch. 14.120 - Appeals (Development Code)
 - Bonney Lake Municipal Code, Section 14.120.040 - Appeal of Hearing Examiner Decision
- **Bremerton Hearing Examiner (*Applies to Land Use and General Administrative*)**
 - Bremerton Municipal Code, Ch. 2.13 - Administrative Hearing Examiner (See 2.13.70 Jurisdiction - List of Areas Covered)
- **Burlen Municipal Code, Ch. 2.15 - Hearing Examiner (135 KB, Page 4 of file) (*Applies to Land Use and Other, Rate Adjustments*)**
- **Clallam County Hearing Examiner Process (*Applies to Land Use*)**
 - Clallam County Code, Ch. 26.04 - Hearing Examiner
 - Clallam County Code, Section 26.04.060 - Applicability (List of Areas Covered)
- **Clark County Code, Ch. 2.51 - Hearing Examiner System (*Applies to Land Use*)**
 - Section 2.52.090 - Powers (List of Areas Covered)
 - Appeals, Hand Out #22 (46 KB) Community Development Services, 1-21-05

- **Duvall (*Applies to Land Use and Other Code Enforcement*)**
 - Duvall Municipal Code, Ch. 2.22 - Enforcement Hearing Examiner
 - Duvall Municipal Code, Section 2.22.050 Final Decision by Examiner (Lists applicable code enforcement sections)
 - Duvall Municipal Code, 14.04.140 through 14.04.210 - Hearing Examiner (Unified Development Regulations)
- **Edgewood (*Applies to Land Use and Non-land Use Matters*)**
 - Edgewood Municipal Code, Ch. 2.40 - Hearing Examiner
 - Edgewood Municipal Code, Section 2.40.080 - Examiner Powers and Duties (Lists areas covered)
- **Des Moines Municipal Code, Ch. 18.94 - Hearing Examiner** (*Applies to Land Use and other Administrative Decisions*)
- **Douglas County Hearing Examiner (Land Use and Building Code Appeals)**
 - Douglas County Code, Ch. 2.13 - Hearing Examiner
- **Kent Hearing Examiner (*Applies to land use and other code enforcement actions, business license denial and revocation, etc*)**
 - Kent Municipal Code, Ch. 2.32 - Office of the Hearing Examiner
 - Kent Municipal Code, Section 2.32.090 - Duties (List of Areas Covered)
 - Kent Municipal Code, Section 1.04.080 Hearing Before the Hearing Examiner (Code Enforcement)
- **Lynnwood Hearing Examiner**
 - Lynnwood Municipal Code, Ch. 2.22 - Hearing Examiner
- **Mason County (*Applies to Building, Planning, and Environmental Health Department Code Violation Issues*)**
 - Mason County Code, Ch. 2.128 - Establishment of the Office of Hearing Examiner
 - Mason County Press Release on New Hearing Examiner System, March 2003
 - Mason County Code, Development Code Enforcement, Section 15.13.045 Hearing before the Hearings Examiner
- **Pierce County Hearing Examiner (*Applies to Land Use*)**
 - Pierce County Code - Ch. 1.22 - Pierce County Hearing Examiner Code (213 KB, Page 25 of file)
- **Puyallup Hearing Examiner (*Applies to Various Land Use Cases - Conditional use permit requests, variance applications, preliminary plat applications, flood control, storm water, shoreline development permits, zoning code interpretation appeals, etc.*)**
 - Puyallup Municipal Code, Ch. 2.54 - Hearing Examiner
 - Puyallup Municipal Code, Section 2.54.070 - Consideration of Land Use Regulatory Cases
 - Puyallup Municipal Code, Section 17.28.005 - Local Improvement District Assessment Roll Hearings
- **Redmond (*Applies to Land Use and other Code Compliance*)**
 - Redmond Municipal Code, Ch. 1.14 - Enforcement and Penalties
 - Redmond Municipal Code, Section 1.14.110 - Code Compliance Hearings Examiner
 - Redmond Municipal Code, Section 1.14.130 Authority of Code Compliance Hearing Examiner
- **SeaTac (*Applies to Land Use and Code Enforcement Appeals*)**
 - SeaTac Municipal Code, Ch. 1.20 - Hearing Examiner System
 - SeaTac Municipal Code, Section 15.22.060 Hearing Examiner Development Review Process
 - SeaTac Municipal Code, Section 15.22.065 Appeal Process
- **Snohomish (City) (*Applies to Land Use, Title 14*)**
 - Snohomish Municipal Code, Ch. 2.33 - Hearing Examiner
 - Snohomish Municipal Code, Ch. 14.10 Appeals and Hearings
- **Snohomish County Hearing Examiner (*Applies to a wide range of subject matter, including many types of land use applications and appeals, such as most rezones, subdivisions, planned residential developments, conditional use permits, code enforcement appeals, administrative permit appeals, State Environmental Policy Act appeals, as well as false alarm notice appeals, and business and animal license appeals*)**
 - Snohomish County Code, Chapter 2.02 - Hearing Examiner
- **Spokane (City) Hearing Examiner (*Issues written documentation and recommendations on land use*)**

applications for variances, special permits, zone changes, subdivisions, and other permits. The office also hears matters relating to local improvement districts, junk vehicles, dangerous buildings, and dangerous dogs, as well as other matters referred by the City Council)

- [Spokane Municipal Code, Ch. 17G.050 - Hearing Examiner](#)
- [Spokane County Hearing Examiner](#) (*Applies to various land use applications, appeals of land use determinations made by divisions of the County Public Works Department, and certain other quasi-judicial matters*)
 - [Spokane County Code, Ch. 1.46 - Hearing Examiner System](#)
- [Tacoma \(Land Use and General Quasi-Administrative Decisions\)](#)
 - [Tacoma Municipal Code, Ch. 1.23 - Hearing Examiner](#) (📎 1.56 MB, Page 109 of file)
 - [Tacoma Municipal Code, Section 1.23.050 - Area of Jurisdiction](#)
- [Thurston County Hearing Examiner](#) (*Applies to Land Use Cases and Administrative Appeals*)
 - [Thurston County Code, Ch. 2.06 - Hearing Examiner](#)
- [Whatcom County Hearing Examiner](#) (*Applies to Specific Land Use and Development Proposals*)
 - [Whatcom County Code, Ch. 20.92 - Hearing Examiner](#)

Hearing Examiner Rules

- [Bainbridge Island Hearing Examiner Rules](#) (📎 73 KB)
- [Bellevue Hearing Examiner Rules of Procedure](#) (📎 182 KB)
- [Bellingham Hearing Examiner Rules of Practice](#)
- [Cowlitz County Planning Commission/Hearing Examiner](#) - rules on administrative appeals as well as certain land use requests such as variances and R.V. Park site plans
- [Douglas County Hearing Examiner Procedures](#) (📎 49 KB)
- [Lake Forest Park Administrative Notice of Appeal and Rules of Procedure](#)
- [Lewis County Hearing Examiner Rules of Procedure](#) (📎 292 KB)
- [Seattle Office of Hearing Examiner Rules of Practice and Procedure](#)

Appeal Application Forms

- [Everett SEPA Appeal Packet](#)
- [Kitsap County Appeal of Hearing Examiner Decision](#) (📎 191 KB)
- [Seattle Office of Hearing Examiner List of Forms](#)
- [Spokane Application for Reconsideration or Appeal](#) (📎 108 KB)
- [Thurston County Procedure for Reconsideration and Appeal of Hearing Examiner Decision to the Board](#) (📎 38 KB)
- [Woodway Hearing Examiner Land Use Application Requirements](#) (📎 22 KB)

Additional References

- [Use of Hearing Examiners by Cities and Counties in Washington](#), *MRSC Focus*, May 1999

Local Government Web Information

- [Bainbridge Island Hearing Examiner](#)
- [King County Hearing Examiner](#)
- [Kitsap County Hearing Examiner](#)
- [Seattle](#)
 - [Citizen Guide to Office of Hearing Examiner](#)
 - [Seattle Hearing Examiner Annual Report, 2003](#)
 - [Results of Hearing Examiner Review](#) (📎 256 KB) City of Seattle Auditor's Office, March 21, 2003
- [Thurston County Guide to Public Hearings, Thurston County Hearing Examiner](#)

■ [Yakima Hearing Examiner Brochure](#) (49 KB)

Use of Hearing Examiners by Cities and Counties in Washington

What Is a Hearing Examiner and Hearing Examiner System?

Local governments in Washington State have the option of hiring or contracting with a hearing examiner to conduct required quasi-judicial hearings, usually in place of local bodies such as the planning commission, the board of adjustment, the board of county commissioners, or the city council. A hearing examiner is an appointive officer who acts in a manner similar to a judge and typically is an attorney. The basic purpose of having a hearing examiner conduct these hearings is to have a professionally-trained individual make objective quasi-judicial decisions that are supported by an adequate record and that are free from political influences. Using a hearing examiner system allows local legislative and advisory bodies that might otherwise conduct these hearings to better concentrate on policy-making, and it can reduce local government liability exposure.

A board of county commissioners or a city council has considerable discretion in drafting an ordinance creating a local hearing examiner system. The position of hearing examiner, the type of issues the hearing examiner is authorized to consider and decide, the effect of the hearing examiner's decision, and whether an appeal of any final decision is provided should all be determined by the local legislative body and set out in the enabling ordinance. A hearing examiner's decision, as defined by the local legislative body, can have the effect of either a recommendation to or a decision appealable to the ultimate decision-maker (typically the board of county commissioners or the city council), or it can be a final decision (appealable to superior court).

Counties and cities use hearing examiners, often in place of planning commissions, primarily for hearing and deciding land development project applications and/or administrative appeals of land use decisions. Hearing examiners are particularly useful where the rights of individual property owners and the concerns of citizens require formal hearing procedures and preparation of an official record. State land use planning and growth management laws provide cities and counties with specific

authority to establish a hearing examiner system to conduct hearings and make recommendations or decide a variety of land use issues. Hearing examiners may also conduct hearings and make recommendations or decisions on other local matters.

This focus paper describes the use of a hearing examiner, the pros and cons of such systems, and options available to Washington counties and cities. References are provided for further information available from the MRSC library and through our Web site.

Establishing a Hearing Examiner System

The office or position of hearing examiner must be established by ordinance. That ordinance should identify what matters the examiner is empowered to hear and what will be the effect of the examiner's decision on those matters. A common approach in such an ordinance is to establish the framework for the hearing examiner system, while leaving it to the examiner to adopt specific, detailed rules for the conduct of hearings. Hearing examiner ordinances typically address: the appointment and term of the hearing examiner; qualifications of the examiner; conflicts of interest and freedom from improper influence; powers and duties, including matters heard; hearing requirements; effect of decisions; reconsideration of decisions, if allowed; and appeals. MRSC has many examples of hearing examiner ordinances and has a compilation of articles and ordinances relating to the hearing examiner system in this state. See <http://www.mrsc.org/library/compil/cphearex.htm>.

Use of the Hearing Examiner System for Land Use, Environmental, and Related Decisions

Most commonly, hearing examiners are used to hear and decide land use project permit applications where a hearing is required, such as in the case of applications for subdivisions, shoreline permits, conditional use permits, rezones, and variances. The recent trend in state law, particularly in conjunction with regulatory reform, has been to allow local governments to give more authority to the hearing examiner to make final decisions on quasi-judicial project permit applications. For example, RCW 58.17.330, as amended by 1995 regulatory reform legislation, provides that the local legislative body can specify that the legal effect of a hearing examiner's decision on a preliminary plat approval is that of "a final decision of the legislative body."

The hearing examiner's role in the project permit process can include:

- open record hearings on project permit applications;

- appeals of administrative SEPA determinations, which in most cases are combined with the open record hearing on the application;
- closed record appeals of administrative decisions made by the local planning staff, including appeals of SEPA determinations where an administrative appeal is provided;
- land use code interpretations to satisfy the statutory requirement that cities and counties planning under the Growth Management Act adopt procedures for such "administrative interpretations" (RCW 36.70B.110(11));
- land use code enforcement proceedings.

Other Issues Assigned to Hearing Examiners

The local legislative body may, by ordinance, authorize a hearing examiner to hear other types of contested matters, in addition to land use permit applications and code enforcement. Examples of other types of decisions and/or administrative appeals that could be handled by a local hearing examiner include:

- discrimination complaints under local personnel policies;
- employment decisions and personnel grievances;
- ethics complaints by citizens or employees;
- local improvement districts – formation hearing and/or assessment roll determinations;
- public nuisance complaints;
- civil infractions;
- property forfeiture hearings under the Uniform Controlled Substances Act (RCW 69.50.505(e));
- tax and licensing decisions and appeals;
- whistleblower retaliation claims.

Pros and Cons of Using Hearing Examiners

Pros

- More professional and timely decisions insuring fairness and consistency.

A professional hearing examiner prepares for and conducts hearings in a manner insuring procedural fairness. Hearings are less emotional and more expeditious. Hearing examiners develop a high level of expertise and specialization, saving time in making decisions and improving their quality and consistency.

- Time-saving for legislative body, freeing legislators to focus on legislative policy and other priority issues.

Conducting public hearings and making quasi-judicial decisions is time-consuming. Local legislators can free themselves from many of their hearing duties by delegating them to a hearing examiner. The local legislative body can still choose to make final decisions or to hear appeals of the examiner's decisions, and those appeals will be facilitated by a thorough and organized record. The use of hearing examiners is especially time-saving for routine decisions and for complex land use decisions requiring formal hearings, citizen participation, and subject matter expertise.

- Separation of policy-making or advisory functions from quasi-judicial functions.

Use of hearing examiners for quasi-judicial hearings separates legislative and administrative functions from quasi-judicial functions. This can improve decision-making by clarifying roles and avoiding conflicts. For jurisdictions with planning commissions, use of a hearing examiner system allows the planning commission to function as an advisory body. The legislative body can focus on policy-making while the planning department concentrates on administration. For counties with three-member boards of commissioners, use of a hearing examiner to conduct quasi-judicial proceedings can greatly assist commissioners who already responsible for a number of legislative and administrative functions.

- Improved compliance with legal requirements, including due process, appearance of fairness, and record preparation.

Hearing examiners have special expertise in managing legal procedural requirements and avoiding appearance of fairness and conflict of interest

issues. The hearing examiner assures procedural fairness, especially in cases where one side is represented by an attorney while the other side is not. Participants are often more satisfied with the proceedings, regardless of the outcome. A properly conducted hearing also results in a complete and well organized written record.

- Reduced liability relating to land use decisions and/or procedural challenges to decisions.

Using a hearing examiner system has been shown to reduce land use liability exposure. Improved hearing procedures, better records, and more consistent and documented decisions are typical of professional hearing examiners. At least one local government insurance authority has officially endorsed the use of hearing examiners for land use decisions based on a survey providing evidence of a lower risk profile for jurisdictions using a hearing examiner system for land use proceedings.

- Improved land development review integration under chapter 36.70B RCW (ESSB 1724).

A number of jurisdictions have adopted hearing examiner systems since the 1995 regulatory reform legislation mandating integration and consolidation of environmental and land use regulatory review for development projects. Use of a specialized land use hearing examiner is an effective method of consolidating and coordinating multiple review processes. For jurisdictions with a mandatory board of adjustment, adoption of a hearing examiner system eliminates the requirement for a board of adjustment.

- Opportunity for feedback to improve plans and regulations from professional hearing officer familiar with comprehensive plans and development regulations.

A professional hearing examiner has familiarity with the local comprehensive plan and development regulations and possibly those of other jurisdictions. Areas where plans, regulations, and policies are weak or inconsistent can be identified and referred to the planning staff, planning commission, or legislative body, providing feedback for continuous improvement.

- Removal of quasi-judicial decision-making from the political arena.

It may be difficult for elected local government officials to entirely eliminate political considerations from their quasi-judicial decision-making. Professional hearing examiners should be immune from political pressures.

Cons

- Cost to county or city for hiring a hearing examiner and staff.

There are costs in hiring hearing examiners and, if necessary, support staff. Counties and cities should consider whether savings in council and commission time, improvements in decision-making, and reduced liability justify the costs. Alternatives such as use of personal service contracts for hearing examiners can reduce costs.

- Increased cost to the parties due to more formal decision-making procedures.

Hearing examiners can increase the formality of the hearing process, although many of the procedural requirements and formalities are already required under state law. This formality can provide the advantage of increased appearance of fairness and impartiality in decision-making.

- Lack of accountability to voters for appointed hearing examiner making decisions or hearing administrative appeals.

Some people maintain that important decisions should be made by elected officials who are accountable to the voters. However, these concerns can be addressed by making the hearing examiner's decision a recommendation to the council or commissioners or by providing for an administrative appeal to the legislative body.

Options for Efficient and Effective Use of Hearing Examiners for Smaller Counties and Cities

Smaller local governments may be reluctant to establish a hearing examiner system because of cost considerations and concerns about whether there will be enough occasions to justify using a hearing examiner. Here are some ideas about addressing these concerns:

- **Contract for hearing examiner services.** Counties and cities may establish a contractual relationship with a hearing examiner in which the examiner is compensated, on an hourly or other basis, only as needed.
- **Share use of a hearing examiner with other jurisdictions.** Some local governments in the state have entered into interlocal agreements to contractually share the services of a hearing examiner.
- **Increase the number of matters heard by hearing examiner.** Doing this could reduce costs relating to use of staff that would otherwise be occupied with those matters.
- **Fund the hearing examiner system from permit review fees.** Local governments can add and/or increase permit fees and appeal fees to help cover the cost of maintaining a hearing examiner system.

Qualifications of Hearing Examiners

There are no state statutes that establish the minimum qualifications of hearing examiners. As noted above, hearing examiners are often attorneys; however, a law degree is not required. A background in the area in which the examiner will perform would obviously be helpful. Since hearing examiners operate mostly in the land use arena, some local governments use examiners with a planning, rather than legal, background. Keep in mind that the land use decision-making process requires a thorough knowledge of legal procedures, and relevant statutes, local ordinances, and case law. In the ordinance establishing the office of hearing examiner, it is a good idea to identify the minimum qualifications that the legislative body deems necessary for a hearing examiner.

Support, Resources, and Training for Hearing Examiners

- **Washington Association of Professional Hearing Examiners;** Jim Driscoll, President; 101 Yesler, Suite 607; Seattle, WA 98104; (206) 628-0039. This organization provides periodic training conferences and maintains a list of hearing examiners in the state.

MRSC Library Resources

The following MRSC Library resources provide more detailed information concerning use of hearing examiners and the land use hearing examiner system, including sample ordinances and rules of procedure:

- "Hearing Examiner System in Washington State: A Compilation of Articles and Ordinances," MRSC, July 1997.
- "A Citizen Guide to the Office of Hearing Examiner," City of Seattle, revised 1994.
- "The Hearing Examiner in Washington State: A Reference Manual for Local Government," Washington State Planning and Community Affairs Agency (no longer in existence), June 1980.
- A Short Course on Local Planning, Planning Association of Washington and the Washington Department of Community, Trade and Economic Development, Version 3.2, March 1997.
- "You Be the Judge: A Handbook for the Land Use Decision Maker," by Jim Driscoll and Ted Hunter, prepared for the Association of Washington Cities (1993).
- Other MRSC Library resources, including sample ordinances establishing the office of hearing examiner, hearing examiner rules of practice and procedure, hearing examiner job descriptions, hearing examiner contracts, and citizens' guides to the hearing examiner process.

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Hearing Examiner

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Hearing Examiner

Robert J. Backstein, Hearing Examiner

Edward L. Good, Deputy Hearing Examiner

The Snohomish County Hearing Examiner is an independent, quasi-judicial department of the county government. The County Council appoints the Hearing Examiner and Deputy Examiner who then provide an independent fact-finding and decision-making service for county government.

The Hearing Examiner's primary responsibility is to provide a fair, impartial, and independent fact-finding and decision-making service within County government. The Hearing Examiner has jurisdiction over a wide range of subject matter, including many types of land use applications and appeals, such as most rezones, subdivisions, planned residential developments, conditional use permits, code enforcement appeals, administrative permit appeals, State Environmental Policy Act appeals, as well as false alarm notice appeals, and business and animal license appeals.

[Proposed Development Information](#)

Snohomish County
Hearing Examiner Administrative Appeals
2002-2006

Year	Hearing Examiner Decisions (Land Use)	Hearing Examiner Decisions Appealed to Council	Hearing Examiner Cases Appealed to Superior Court after Council Review	Other Land Use Cases Filed in Superior Court (APA or LUPA appeals)	TOTAL ALL LAND USE CASES FILED IN COURT
2006	111 (to date)	8	1 Warm Beach	1 Ross	2
2005	219	5	1 Frei	5 Tuerk Startup Water Dist. PMA Development Stilly Flood Control District Brightwater King County 1	6
2004	275	4	1 Conom	3 Island Crossing (1) Island Crossing (2) Brightwater King County 5	4
2003*	193	5	2 Meadowood Preservation Belmark Homes	5 Blakey Friends of Monroe Golf Course(2) Kinney Matheson Santosa Hensley Gardes Brightwater King County 2	8
New UDC 2/1/03					
2002	216	16	5 Blakey Bellemont Sundquist Reynolds Friends of Monroe Golf	3 Arnold Belling Clark	8